

**KIRKPATRICK & LOCKHART  
NICHOLSON GRAHAM LLP**  
55 Second Street, Suite 1700  
San Francisco, California 94105-3493  
Telephone: 415.882.8200  
Facsimile: 415.882.8220  
Raymond L. Gill (SBN 153529)  
Geoffrey Davis (SBN 214692)  
Email: Ray.Gill@klgates.com  
Email: Geoff.Davis@klgates.com

Attorneys for Defendant Crane Co.

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
(San Francisco Division)**

**RUSSELL C. ROBERTS, JR.,**

Plaintiff,

vs.

**A.W. CHESTERTON COMPANY, et al.,**

Defendants.

Case No. 3:08-cv-01338 JL

(Superior Court, County of San Francisco,  
Case No. CGC-07-274248)

**DECLARATION OF GEOFFREY M.  
DAVIS, ESQ. IN SUPPORT OF CRANE  
CO.'S REQUEST FOR ORAL  
ARGUMENT ON MOTION FOR  
REMAND**

Hearing Date: March 19, 2008

Time: 9:30 a.m.

Courtroom: F, 5<sup>th</sup> Floor

Judge: Chief Magistrate Judge James Larson

I, Geoffrey M. Davis, declare:

1. I am an attorney admitted to practice before this Court. I am an associate with the law firm of Kirkpatrick & Lockhart Preston Gates Ellis LLP, counsel of record for Defendant Crane Co. I make this declaration in support of Crane Co.'s Request for Oral Argument on Plaintiff's Motion to Remand. I am one of the attorneys for Crane Co. in this case, and I make the statements in this Declaration on personal knowledge, and am competent so to testify.

2. On March 14, 2008, I received an e-mail message from Lucinda Storm, Esq., counsel for the Durabla Manufacturing Company, informing me that Durabla has resolved this case with the

1 plaintiff. On March 18, 2008, I received notice of an e-filed letter from Ms. Storm's law firm  
2 informing the Court that this case has been resolved as to Durabla. A true and correct copy of the  
3 March 18, 2008 letter is attached as Exhibit A hereto.

4 3. During the trial of this matter in the Superior Court for San Francisco County,  
5 California, plaintiff called pulmonologist Barry Horn, M.D. Dr. Horn was the only witness who  
6 testified as to the plaintiff's current life expectancy, and no other medical experts were to testify for  
7 plaintiff after Dr. Horn. In that regard, Dr. Horn testified that the plaintiff was diagnosed with  
8 mesothelioma in March of 2007, that a patient such as the plaintiff and undergoing similar treatment  
9 would have about a 2 year life expectancy from diagnosis, and that the most he could say is that it is  
10 doubtful that the plaintiff would survive a full year. Dr. Horn did not testify that plaintiff is likely to  
11 die any sooner than that. A true and correct copy of excerpts of the Trial Transcript for March 6,  
12 2008, as referenced in Crane Co.'s Request for Oral Argument on Motion to Remand, is attached as  
13 Exhibit B hereto.

14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
15 correct.

16 Dated: March 18, 2008

  
Geoffrey M. Davis

# **EXHIBIT A**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
BEFORE THE HONORABLE JULIE TANG, JUDGE PRESIDING  
DEPARTMENT NUMBER 303

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RUSSELL ROBERTS, JR.	)	
	)	
Plaintiff,	)	Case No. 274248
	)	Jury Trial
vs.	)	
	)	
A.W. CHESTERTON, ET AL.	)	
	)	
Defendants.	)	
_____	)	

Reporter's Transcript of Proceedings  
Volume 12  
Thursday, March 6, 2008

APPEARANCES OF COUNSEL:

For Plaintiff:

Paul, Hanley & Harley  
811 West Seventh Street, Suite 206  
Los Angeles, California 90017  
By: ANTHONY E. VIEIRA, ESQ.  
STEPHEN HEALY, ESQ.

For Defendant Metalclad:

McKenna, Long & Aldridge  
101 California Street, 41st Floor  
San Francisco, California 94111  
By: FRANK K. BERFIELD, ESQ.

1 he could have made, let's say, as of the summer of 2005, that  
2 would have made any difference in what you believe his life  
3 expectancy likely is?

4 A. No, there is no evidence in the literature anywhere that  
5 diagnosing the disease earlier would have any long-term impact  
6 on the disease.

7 Q. All right. Is it something that makes sense for Mr. Roberts  
8 to say, you know, what I am going to aggressively pursue,  
9 something that might help me?

10 A. Definitely for this tumor, the data available in the  
11 literature indicates, for conservative treatment of his disease,  
12 the average life expectancy is somewhere in the area of 12 to 14  
13 months.

14 For someone who has aggressive surgery like he had, the  
15 average survival is roughly two years.

16 Some people do much better and some people are not doing  
17 well at all. So by going an aggressive route, we are talking  
18 about another year.

19 Q. How long do you think Mr. Roberts will live?

20 A. I don't know. I would say, in view of the amount of  
21 disease, my best shot at this now is it is doubtful he will be  
22 alive a year from now.

23 Q. Okay. If Mr. Roberts hadn't developed mesothelioma, I  
24 believe you said -- strike that.

25 If Mr. Roberts, prior to the presentation of the  
26 mesothelioma, didn't have any other health problems --

27 A. He had no health problems. He had no life-threatening  
28 illness. If you want to expect how long he would live, if you

# **EXHIBIT B**

LAW OFFICES OF  
LUCINDA L. STORM, ESQ.

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610 A Third Street • San Francisco, California 94107  
Telephone: (415) 777-6990 • Facsimile: (415) 777-6992  
Email: [khollenbeck@storm-law.com](mailto:khollenbeck@storm-law.com)

March 18, 2008

**VIA E-FILE**

Mr. Wings Hom  
Clerk  
Chief Magistrate James Larson  
Courtroom F, 15<sup>th</sup> Floor  
450 Golden Gate Ave.  
San Francisco, CA 94102

Re: Russell C. Roberts, et al. v. A.W. Chesterton Company, et al.  
U.S.D.C. Case No. C 08-01338 JL  
Our Client: Durabla Manufacturing Company

Dear Mr. Hom:

Pursuant to your request, this will confirm that this matter has been resolved as to our client, Durabla Manufacturing Company.

Very truly yours,

LAW OFFICES OF LUCINDA L. STORM, ESQ.

  
Kenneth D. Hollenbeck, Esq.

KDH: st  
Cc: Paul, Hanley & Harley, LLP – counsel for plaintiff (by facsimile);  
K&L Gates – counsel for Crane Co. (by facsimile)